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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|--------------------------|---------------------|------------------|
| 09/545,592 | 04/07/2000 | Richard Henry Mandel III | ST9-99-179 | 9939 |

23373 7590 04/30/2003

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| EXAMINER |
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NGUYEN, TAM V

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| ART UNIT | PAPER NUMBER |
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2172

DATE MAILED: 04/30/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/545,592

Applicant(s)

MANDEL, RICHARD HENRY

Examiner

Tam V Nguyen

Art Unit

2172

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 27 March 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: 1-33.

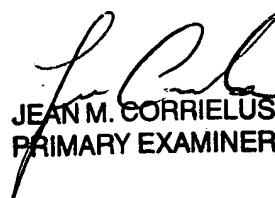
Claim(s) withdrawn from consideration: _____.

8. ☐ The proposed drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____

Continuation of 5. does NOT place the application in condition for allowance because:

Applicant(s) asserted that there is no support in the prior art that a person of ordinary skill in the art would be motivated to modify a query on include a FALSE clause and neither reference suggests any need for modifying Goldberg to include a FALSE statement within the query.

The examiner disagrees with this assertion. The claims do not capture the essence of the invention as argued in applicant's remark (pages 2 and 3). Applicant failed to rebut the examiner's prima facie case for obviousness by failing to address the correspondences drawn between the prior art and applicants' claimed subject matter. It is noted; however, that Chan teaches the Hpcode-Plus instructions between the CEXP and the matching CSEP Hpcode-Plus instructions represent the true clause of the conditional evaluation. The Hpcode-Plus instruction between the CSEP and the matching CEND Hpcode-Plus instructions represent the false clause of the conditional evaluation. Both the true clause and the false clause must either result in zero or one item being pushing onto the expression stack, (col. 19, lines 11-35). The Hpcode-Plus instruction between the CSEP and the matching CEND Hpcode-Plus instructions represent the false clause of the conditional evaluation. Both the true clause and the false clause must either result in zero or one item being pushing onto the expression stack. In paper number 6, the examiner went through the claims phrase by phrase and referred to the prior art column and line number as to where he has drawn the correspondences between applicants' claim phrases and prior art. By failing to address these correspondences, applicants have failed to rebut the examiner's prima facie case of obvious uses for a different purpose which does not alter the conclusion that its use in a prior art device would be prima facie obvious from the purpose disclosed in the reference. Moreover, the examiner recognizes that references cannot be arbitrarily combined to produced the claimed invention and that there must be some reason, teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available wh one skilled in the art would be motivated to make the proposed combination of primary and secondary references. In re Nomiya USPQ 607 (CCPA 1975). The motivation in the prior art to combine reference need not be identical to that of the applicant to establish obviousness. In re Kemp, 40 USPQ2d. Applicants are reminded that there is no requirement that a motivation to make the modification be expressly articulated. The test for combining references is what the combination of disclosures taken as a whole would suggest to one of ordinary skill in the art. In re McLaughlin, 170 USPQ209 (CCPA 1971). References are evaluated by what they suggest to one versed in the art, rather than by their specific disclosures. In re Bozek, 163 USPQ 545 (CCPA) 1969. The examiner has substantial evidence why one having ordinary skill in the art would have found it obvious to combine the teachings of the cited references. The examiner has respectfully submitted that one having skill in the art at the time the invention was made would have found it obvious to combine the teachings of the cited references because such a combination would provide the architecture neutral distribution format (ANDF) operate on any computer platform. Thus, ANDFs are efficient because only one version of the software distribution copy is required, and this version of the software distributed without modifications to heterogeneous target computer platforms. Thus, for the above reasons, it is believed that the rejection under 35 U.S.C. 103 provides substantial evidence to support the rationale statement in the above rejection, and the rejection under 35 U.S.C 103 should be sustained. Therefore, the examiner is entitle to the broadest reasonable interpretation of the claims, and the applicants always have the opportunity to amend the claims during prosecution and broad interpretation by the examiner reduces the possibility that the claim, once issued, will be interpreted more broadly that is justified. In re Prater 162 USPTQ 541 550-51 (CCPA 1969).


JEAN M. CORRIELLUS
PRIMARY EXAMINER